



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,848	03/04/2004	S. Fred Brunk	22436.0	3858

37833 7590 11/27/2006

LITMAN LAW OFFICES, LTD
PO BOX 15035
CRYSTAL CITY STATION
ARLINGTON, VA 22215

EXAMINER

LARYEA, LAWRENCE N

ART UNIT	PAPER NUMBER
----------	--------------

3735

DATE MAILED: 11/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

NT

Office Action Summary

Application No.

10/791,848

Applicant(s)

BRUNK, S. FRED

Examiner

Lawrence N. Laryea

Art Unit

3735

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 04-Mar-2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, in claim 1, line 6-7, the "means for uniquely identifying each of the shades in spectrum," and in claim 2, line 2-4, the "means for uniquely identifying each of the shades of the spectrum" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Evans (Patent 5078486)** in view of **Nowak (Patent 3844641)**.

4. Re Claims 1-15: **Evans** teaches an apparatus for measuring differences in transmission of light through a lens of an eye of a patient, comprising: variable and constant intensity light sources (**See Abstract, Fig.1 for illumination units 18,20,22, cabinet (chambers 6,8,10,12), Col. 1, line 55-68 and Col. 2, line 1-7**), a control means for adjusting the different light intensities (**See Col. 3, line 62-65 and Col. 1, line 28-30**), a displaying means for displaying the chart (**See Fig.1 where chart comprises an enclosed box and at a top portion there is a Snellen chart**) but does not disclose that the chart has a selected shade of a test color and a reference section displaying a spectrum of shades of the test color including the selected shade and a means for uniquely identifying each of the shades displayed in the spectrum of the reference section on the chart .

5. **Nowak** discloses an eye test apparatus where an eye chart (**See Figures 1,2 and 3**) has a selected shade of a test color and a reference section displaying a spectrum of shades of the test color including the selected shade and a means for uniquely identifying each of the shades displayed in the spectrum of the reference

section on the eye chart in which the test could be recorded (**See Col. 2, line 25-35, Col. 1, line 23-26, and Col. 4, line 9-14**).

6. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the eye measuring apparatus of **Evans** similar to that of **Nowak** where the eye chart has a selected shade of a test color and a reference section displaying a spectrum of shades of the test color including the selected shade and a means for uniquely identifying each of the shades displayed in the spectrum of the reference section on the eye chart in order to diagnose and correct ocular dysfunction as taught by **Nowak**.

7. Claims 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Evans (Patent 5078486)** in view of **Hunt et al (Patent 3801188)**.

8. Re Claims 16-17: **Evans** teaches a method for measuring differences in transmission of light through a lens of an eye of a patient, comprising: displaying a chart, illuminating the chart with light sources (**See Abstract, Fig.1 for illumination units 18,20,22 cabinet (chambers 6,8,10,12), Col. 1, line 55-68 and Col. 2, line 1-7**) adjusting the different light intensities by a control means (**See Col. 3, line 62-65**) but does not expressly disclose illuminating the test color section and a reference section, and asking the patient to match the colors (hue or spectrum) of the test color shown in the test section to colors (hue or spectrum) of the reference color section.

9. **Hunt et al** disclose a method for eye testing (**See Col. 3, line 1-3**) by illuminating the test color section (**reference section, See Col. 3, line 11-12**) and a reference section (**test color section, Col. 1, line 66-68 and Col. 2, line 1-15**) and asking the

patient to match the colors (hue or spectrum) of the test color shown in the test section to colors (hue or spectrum) of the reference color section (**See Col. 3, line 56-67**).

10. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method for measuring differences in transmission of light through a lens of an eye of a patient of **Evans** similar to that of **Hunt et al** where the eye testing method involves illuminating the test color section (**reference section, See Col. 3, line 11-12**) and a reference section (**test color section, Col. 1, line 66-68 and Col. 2, line 1-15**) and asking the patient to match the color (hue or spectrum) of the test color shown in the test section to colors (hue or spectrum) of the reference color section (**See Col. 3, line 56-67**) in order to detect ocular dysfunction.

11. It is inherent to record or keep tested results of patient in order to perform data analysis of the acquired data and use the tested results (data) to diagnose and correct ocular dysfunction.

12. Applicant has not disclosed that "displaying a spectrum of shades of the test color identified by a unique indicia" provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected the colors of **Hunt et al** as modified with Evans, and applicant's invention, to perform equally well with any type of indicia or without indicia on the different colors of the reference section, as reference sections with or without unique indicia, would perform or yield the same function of visual testing.

13. Therefore, it would have been prima facie obvious to modify **Hunt et al** to obtain the same method as specified in claims 16 and 17 because such a modification would

have been considered a mere design consideration which fails to patentably distinguish over the prior art of **Hunt et al** as modified by Evans.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Pynson (Patent 5430510) teaches an eye measuring apparatus where obtained data is recorded.

Ohyama et al (Patent 5864364) teaches a means for identifying a color in a spectrum.

Sachtler (Patent 6851809) teaches a method for testing a plurality of regions in a color space to identify any of color vision deficiencies: protanopia, deuteranopia, tritanopia, and related anomalies of the eyes.

Chen et al (Patent 2004/0061835) teaches a method comprising; displaying a plurality of groups of eye test charts for the examinee to identify, each group corresponding to one type of eye disease, displaying at least one colored color-matching contrast chart, requesting the examinee to match colors; taking the color-matching result from the examinee.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lawrence N. Laryea whose telephone number is 571-272-9060. The examiner can normally be reached on 8:30 a.m.-5:30 p.m. EST.

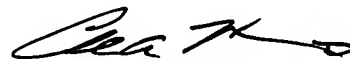
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571-272-4730. The fax phone

Art Unit: 3735

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LNL
November 13, 2006.



Charles A. Marmor, II
Supervisory Patent Examiner
Art Unit 3735